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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Viral DRM, LLC,

Plaintiff,

v.

Sereno Group, Inc.,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Viral DRM, LLC (“*Plaintiff*”), by and through its undersigned counsel, for its Complaint against defendant Sereno Group, Inc. (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C. §501.

2. Ronald Brian Emfinger (“*Emfinger*”) created a video showing footage of a tornado hitting the city of Elgin, Texas (the “*Video*”) in which Plaintiff owns the rights and licenses for various uses including online and print publications.

3. Defendant is a real estate company which owns and operates an

1 Instagram account with the name “@jordan_selling_tri_valley_ca” at domain
2 www.instagram.com (the “Account”).

3 4. Defendant, without permission or authorization from Plaintiff, actively
4 copied and displayed the Video on the Account and engaged in this misconduct
5 knowingly and in violation of the United States copyright laws.

6 **PARTIES**

7 5. Plaintiff Viral DRM, LLC is an Alabama limited liability company and
8 maintains its principal place of business in Talladega County, Alabama.

9 6. Upon information and belief, defendant Sereno Group, Inc., is a
10 Delaware corporation with a principal place of business at 214 Los Gatos - Saratoga
11 Road, Los Gatos in Santa Clara County, California and is liable and responsible to
12 Plaintiff based on the facts herein alleged.

13 **JURISDICTION AND VENUE**

14 7. This Court has subject matter jurisdiction over the federal copyright
15 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

16 8. This Court has personal jurisdiction over Defendant because it
17 maintains its principal place of business in California.

18 9. Venue is proper under 28 U.S.C. §1391(b)(2) because Defendant does
19 business in this Judicial District and/or because a substantial part of the events or
20 omissions giving rise to the claim occurred in this Judicial District.

21 **FACTS COMMON TO ALL CLAIMS**

22 **A. Plaintiff's Copyright Ownership**

23 10. Plaintiff is a professional videography company which is the legal and
24 rightful owner of certain videos which Plaintiff commercially licenses.

25 11. Plaintiff has invested significant time and money in building Plaintiff's
26 video portfolio.

27 12. Plaintiff has obtained active and valid copyright registrations from the
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1 United States Copyright Office (the “USCO”) which cover many of Plaintiff's videos
2 while many others are the subject of pending copyright applications.

3 13. Plaintiff's videos are original, creative works in which Plaintiff owns
4 protectable copyright interests.

5 14. On March 21, 2022, Emfinger first published the Video. A copy of the
6 Video is attached hereto as Exhibit 1.

7 15. In creating the Video, Emfinger personally selected the subject matter,
8 timing, lighting, angle, perspective, depth, lens, and camera equipment used to
9 capture the video recording.

10 16. On April 22, 2022, the Video was registered by the USCO under
11 Registration No. PA 2-354-516.

12 17. Emfinger created the Video with the intention of it being used
13 commercially and for the purpose of display and/or public distribution.

14 18. Emfinger published the Video by commercially licensing it to
15 numerous third-party media and weather companies for the purpose of display
16 and/or public distribution.

17 19. On March 21, 2022, Michael Brandon Clement (“*Clement*”) and Brett
18 Adair (“*Adair*”) acquired the rights in and to the Video from Emfinger by way of
19 written assignment.

20 20. Thereinafter, on May 17, 2022, Plaintiff acquired the rights in and to
21 the Video from Clement and Adair by way of written assignment.

22 **B. Defendant's Infringing Activity**

23 21. Defendant is the registered owner of the Account and is responsible for
24 its content.

25 22. Defendant is the operator of the Account and is responsible for its
26 content.

27 23. The Account is a key component of Defendant's popular and lucrative
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1 commercial enterprise.

2 24. The Account is monetized in that it promotes the business to the public
3 and, upon information and belief, Defendant profits from these activities.

4 25. On or about March 25, 2023, Defendant displayed the Video on the
5 Account as part of an Instagram post at URL:
6 <https://www.instagram.com/tv/Cbg9YFKscQ6/>. A copy of a screengrab of the
7 Account including the Video is attached hereto as Exhibit 2.

8 26. Without permission or authorization from Plaintiff, Defendant
9 volitionally copied and displayed Plaintiff's copyright protected Video on the
10 Account.

11 27. Plaintiff first observed and actually discovered the Infringement on July
12 29, 2022.

13 28. Upon information and belief, the Video was copied and displayed by
14 Defendant without license or permission, thereby infringing on Plaintiff's copyrights
15 in and to the Video (hereinafter all of the unauthorized uses set forth above are
16 referred to as the "*Infringement*").

17 29. The Infringement includes a URL ("*Uniform Resource Locator*") for a
18 fixed tangible medium of expression that was sufficiently permanent or stable to
19 permit it to be communicated for a period of more than a transitory duration and
20 therefore constitutes a specific infringement. *17 U.S.C. §106(5)*.

21 30. The Infringement is an exact copy of Plaintiff's original video recording
22 that was directly copied and displayed by Defendant on the Account.

23 31. Upon information and belief, Defendant takes an active and pervasive
24 role in the content posted on its Account, including, but not limited to copying,
25 posting, selecting, commenting on, and/or displaying video recordings including but
26 not limited to Plaintiff's Video.

27 32. Upon information and belief, the Video was willfully and volitionally
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1 posted to the Account by Defendant.

2 33. Upon information and belief, Defendant was aware of facts or
3 circumstances from which the determination regarding the Infringement was
4 apparent. Defendant cannot claim that it was not aware of the infringing activities,
5 including the specific Infringement which forms the basis of this complaint, since
6 such a claim would amount to only willful blindness to the Infringement on the part
7 of Defendant.

8 34. Upon information and belief, Defendant engaged in the Infringement
9 knowingly and in violation of applicable United States copyright laws.

10 35. Upon information and belief, Defendant has the legal right and ability
11 to control and limit the infringing activities on its Account and exercised and/or had
12 the right and ability to exercise such right.

13 36. Upon information and belief, Defendant monitors the content on its
14 Account.

15 37. Upon information and belief, Defendant has received a financial benefit
16 directly attributable to the Infringement.

17 38. Upon information and belief, the Infringement increased traffic to the
18 Account and, in turn, caused Defendant to realize an increase in its business
19 revenues.

20 39. Upon information and belief, a large number of people have viewed the
21 unlawful copy of the Video on the Account.

22 40. Upon information and belief, Defendant at all times had the ability to
23 stop the reproduction and display of Plaintiff's copyrighted material.

24 41. Defendant's use of the Video harmed the actual market for the Video.

25 42. Defendant's use of the Video, if widespread, would harm Plaintiff's
26 potential market for the Video.

27 43. As a result of Defendant's misconduct, Plaintiff has been substantially
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1 harmed.

2 **FIRST COUNT**

3 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

4 44. Plaintiff repeats and incorporates by reference the allegations contained
5 in the preceding paragraphs, as though set forth in full herein.

6 45. The Video is an original, creative work in which Plaintiff owns a valid
7 copyright.

8 46. The Video is properly registered with the USCO and Plaintiff has
9 complied with all statutory formalities under the Copyright Act and under
10 regulations published by the USCO.

11 47. Plaintiff has not granted Defendant a license or the right to use the
12 Video in any manner, nor has Plaintiff assigned any of its exclusive rights in the
13 copyright to Defendant.

14 48. Without permission or authorization from Plaintiff and in willful
15 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and
16 illegally copied, reproduced, distributed, adapted, and/or publicly displayed works
17 copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its
18 copyrights.

19 49. Defendant's reproduction of the Video and display of the Video
20 constitutes willful copyright infringement.

21 50. Upon information and belief, Defendant willfully infringed upon
22 Plaintiff's copyrighted Video in violation of Title 17 of the U.S. Code, in that
23 Defendant used, published, communicated, posted, publicized, and otherwise held
24 out to the public for commercial benefit, Plaintiff's original and unique Video
25 without Plaintiff's consent or authority, by using it on the Account.

26 51. As a result of Defendant's violations of Title 17 of the U.S. Code,
27 Plaintiff is entitled to an award of actual damages and disgorgement of all of
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1 Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504
2 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for
3 statutory damages against Defendant for each infringement pursuant to 17 U.S.C. §
4 504(c).

5 52. As a result of the Defendant's violations of Title 17 of the U.S. Code,
6 the court in its discretion may allow the recovery of full costs as well as reasonable
7 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

8 53. As a result of Defendant's violations of Title 17 of the U.S. Code,
9 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his
10 copyright pursuant to 17 U.S.C. § 502.

11 **JURY DEMAND**

12 54. Plaintiff hereby demands a trial of this action by jury.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

15 That the Court enters a judgment finding that Defendant has infringed on
16 Plaintiff's rights to the Video in violation of 17 U.S.C. §501 *et seq.* and therefore
17 award damages and monetary relief as follows:

- 18 a. finding that Defendant infringed Plaintiff's copyright interest in
19 and to the Video by copying and displaying it without a license
20 or consent;
- 21 b. for an award of actual damages and disgorgement of all of
22 Defendant's profits attributable to the infringements as provided
23 by 17 U.S.C. § 504(b) in an amount to be proven or, in the
24 alternative, at Plaintiff's election, an award for statutory damages
25 against Defendant for each infringement pursuant to 17 U.S.C. §
26 504(c), whichever is larger;
- 27 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant
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- 1 from any infringing use of any of Plaintiff's works;
2 d. for costs of litigation and reasonable attorney's fees against
3 Defendant pursuant to 17 U.S.C. § 505;
4 e. for pre-judgment interest as permitted by law; and
5 f. for any other relief the Court deems just and proper.
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7 DATED: November 27, 2023

8 **SANDERS LAW GROUP**

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